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सं. 8] नई दिल्ली, शनिवार, मार्च 9, 1996/फाल्गुन 19, 1917
No. 8] NEW DELHI, SATURDAY, MARCH 9, 1996/PHALGUNA 19, 1917

इस भाग में विन्न वृद्ध संख्या दी जाती है जिसमें कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union
Territories)

भारत निर्वाचन आयोग
नई दिल्ली, 19 फरवरी, 1996

नदीन प्रविष्टियां जोड़ी जायेंगी और क्रम संख्या 8 से
12 को क्रम संख्या 9 से 13 के रूप में पढ़ा जायेगा

आ.अ. 36:—लोक प्रतिनिधित्व अधिनियम, 1951
(1951 का 43) की धारा 22 की उप धारा (1) के
उपबन्धों के अनुसरण में निर्वाचन आयोग एनद्वारा यह
निर्देश देता है कि उसकी तारीख 5 जुलाई, 1994 में
निम्नलिखित संशोधन किए जायेंगे, अर्थात्:—

[सं. 434/हि.प्र./94 (1)]

आदेश में,
वनश्याम खोहर, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 19th February, 1996

उक्त अधिसूचना में संशोधन गारणी में:—

1. मद सं. "3-कांगड़ा संसदीय निर्वाचन क्षेत्र" के सामने
स्लैम्ब 2 में क्रम सं. 6 पर, विद्यमान प्रविष्टि के बाद
"7-उप-प्रभागीय अधिकारी (सिविल), जवाली", "8-
उप-प्रभागीय अधिकारी (सिविल), बैजनाथ" प्रविष्टियां
जोड़ी जायेंगी और क्रम संख्या 7 से 12 को क्रम संख्या
9 से 14 के रूप में पढ़ा जायेगा; और
2. मद सं. "4-हमीरपुर संसदीय निर्वाचन-क्षेत्र", के
सामने स्लैम्ब 2 में क्रम संख्या 7 पर विद्यमान प्रवि-
ष्टियों के बाद, "8-उप-प्रभागीय अधिकारी (सिविल),

O. N. 36.—In pursuance of the provisions of
sub-section (1) of Section 22 of the Representation
of People Act, 1951 (43 of 1951), the Election
Commission hereby directs that the following amend-
ments shall be made in its notification No. 434/HP/
94(1), dated the 5th July, 1994, namely:—

In the Table appended to the said notification:—

1. against item No. "3-Kangra Parliamentary
Constituency", after the existing entry at
serial No. 6 in column 2, the entries.
"7. Sub-Division Officer (Civil), Jawali",
"8. Sub-Divisional Officer (Civil), Baij-
nath" shall be added and serial Nos. 7 to
12 shall be read as serial Nos. 9 to 14 ;
and

2. against item No. "4-Hamirpur Parliamentary Constituency", after the existing entry at serial No. 7 in column 2, the entries "8. Sub-Divisional Officer (Civil), Nadaun" shall be added and serial Nos. 8 to 12 shall be read as serial Nos. 9 to 13.

[No. 434/HP/94(1)]

By Order.

GHANSHYAM KHOHAR, Secy.

मुद्रित

नई दिल्ली, 19 फरवरी, 1996

आ.अ. 37:—भारत के राजपत्र, भाग-II, खण्ड 3 (iii) के अगले अंक में प्रकाशित तारीख 7 दिसम्बर, 1995 के आयोग के समसंख्यक आदेश में "श्री अलेखा चन्द्र मल्लिक" के नाम को "श्री अलेखा चरण मल्लिक" के रूप में संशोधित किया जाए।

[संख्या 76/उड़ीसा-वि.स./95 (3)/1525]

आदेश से,

सी. आर. ब्रह्मम, सचिव

CORRIGENDUM

New Delhi, the 19th February, 1996

O. N. 37.—In the Commission's order of even no. dated 7 December, 1995 published in the next issue of the Gazette of India, Part-II, Section 3(iii), the name of "Sh. Alkha Chandra Mallick" shall be Corrected as "Sh. Alekha Charan Mallick"

[No. 76/OR-LA/95(3)/1525]

By order,

C. R. BRAHMAM, Secy.

नई दिल्ली, 19 फरवरी, 1996

आ.अ. 38.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1990 की निर्वाचन अर्जी सं. 2 में मध्य प्रदेश, उच्च न्यायालय, जबलपुर के तारीख 22 नवम्बर, 1995 के आदेश को एतद्वारा प्रकाशित करना है।

[सं. 82/न.प्र.-नो.स./ (2/90)/96]

आदेश से,

सी. आर. ब्रह्मम, सचिव

New Delhi, the 19th February, 1996

O.N. 38.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes the judgement/order of the High Court of Madhya Pradesh at Jabalpur dated 22-9-1995 in Election Petition No. 2 of 1990.

[No. 82-MP-HP/(2/90)/96]

By order,

C. R. BRAHMAM, Secy.

ELECTION PETITION No. 2 of 1990

Pawan Diwan

Vs.

Shri Vidya Charan Shukla

JUDGMENT

Pawan Diwan, the petitioner in the present election petition, having lost the battle of ballots as against Shri Vidya Charan Shukla (Respondent No. 1) in the general election for parliamentary Constituency No. 18, has challenged his election seeking following reliefs :—

- (1) The returning Officer of Mahasamund Parliamentary Constituency be ordered to produce for re-counting all the votes and ballot papers of that constituency and after independent re-counting, the petitioner be declared as duly elected from that Constituency.
- (2) The declaration of respondent No. 1 as the duly elected candidate from Mahasamund Parliamentary Constituency in the last election be declared void.
- (3) Such other relief as the Court thinks fit may also kindly be granted."

The petitioner was a candidate at the said election sponsored by Congress-I political party whereas the respondent No. 1 was the candidate sponsored by Janta Dal political party.

2. The controversy in the present petition, as survives, is in a circumscribed limit on account of subsequent developments whereover parties are not at variance :

Parliament as constituted after general elections held in November, 1989 before could run its full term met its dissolution sometime in March, 1991 and as a resultant whereof fresh poll for Parliament took place in May, 1991 whereat the respondent No. 1 having contested afresh from the very constituency got re-elected for the Parliament.

3. Heard the learned counsel for the petitioner, Shri R. K. Pandey, Senior Advocate and the learned counsel for the respondent No. 1 Shri V. K. Tankha.

4. The question for determination at present as per submissions advanced by the learned counsel for the respondent No. 1 is regarding the survival of the election petition and its maintainability wherefor though the facts, which are undisputed, have relevance but only peripheral :

(a) The election petition (for brevity hereinafter referred to as 'the petition') was filed in this Court on 9-1-1990 whereupon this Court on 23rd January, 1990 passed an order adjourning the petition for 24th January, 1990 for the purpose of hearing on the question whether the provisions of Section 81, 82 and 117 of the Representation of People Act have been complied with in respect of the petition and the Court having found that the provisions of Sections 81, 82 and 117 of the Representation of People Act, 1951 (for brevity hereinafter referred to as 'the Act') appear to have been substantially complied-with directed for issuance of notices to the respondents. Respondents No. 1 to 9 were duly served with the notice of the petition though on different dates but remained unrepresented except respondent No. 1, who filed his written statement on 10-5-1991.

(b) On 12-7-1991 learned counsel for the petitioner prayed for time for making a statement, in view of the changed circumstances, whether the petitioner would like to prosecute the petition which led to the postponement of the case for 29-7-1991, on which date further time was allowed posting the petition for 30-8-1991 but again the petition was adjourned, at the request of the learned counsel for the respondent No. 1, for 27-11-92. In view of the earlier order dated 29-7-91, the learned counsel for the petitioner was directed to inform finally to the Court as to whether he would like to prosecute the petition, wherefor after providing an opportunity on 7-1-93, posted the petition for 11-2-93. On 17-9-93 the Court was informed that there had

been negotiations between the petitioner and respondent No. 1 in connection with the compromise but they reached to no compromise and the petition as such to continue.

From said facts it discerns that some bargaining deal was being in process but could not materialise.

- (c) On 24-9-1993 the petition was directed to be listed on 18-10-93 for orders on I.A. No. 65/91 moved by respondent No. 1 under Order 7, Rule 11 read with section 151 of the Code of Civil Procedure (for brevity hereinafter referred to as 'the application').

5. Learned counsel for the applicant-respondent No. 1 (for brevity hereinafter referred to as 'the applicant') pressed the aforesaid application. The paragraph 1 of this application reads as :—

- "1. That in the prayer clause, the petitioner has made two prayers namely : (1) 'That in prayer clause No. 1 relief has been claimed for the recounting of the votes of Mahasamund Constituency. It is submitted that the respondent was declared elected on 27-11-1989 from Mahasamund Constituency. Thereafter, the Parliament was dissolved and fresh election for Mahasamund Constituency had already taken place and as such the prayer for recounting of the votes of previous election has become infructuous and this relief cannot be granted to the petitioner.'"

A reply to this application was filed by the petitioner-opposite party (for brevity hereinafter referred to as 'the opposite-party') on 27-7-1994 and in paragraph 1 thereof the fact of dissolution of Parliament and fresh election of respondent No. 1 from Mahasamund Constituency has not been denied. Admitted position, thus, is that election as is the subject matter of challenge by means of present petition became nonest. The question needs consideration, in view of the context of the changed circumstances, is whether the election petition qua the relief of recounting of all the ballot papers of the aforesaid constituency for the elections held earlier on 26-11-1989 survives for the purpose of granting relief of recounting of the ballot papers leading to the declaration in favour of the petitioner for his being duly elected for the Parliament in case his total number of valid votes exceed that of the respondent No. 1's.

6. Learned counsel for the applicant submitted :

Firstly that in view of the provisions of Order 7, Rule 11 of the Code of Civil Procedure, the changed circumstances have resulted, in fact, in non-survival of cause of action and as a result whereof the petition could be said to be the petition disclosing no cause of action qua the relief of recounting of ballot papers for setting aside of the election of the respondent No. 1, which is rendered infructuous and for his declaration in place of the respondent No. 1.

Secondly that the requirements of Section 83 of the Act not having satisfied inasmuch as the petitioner in the petition though having alleged for commission of corrupt practices in the said election held on 26-11-1989 has failed to satisfy the mandatory requirement of law by not filing proper affidavit in support of the allegations of corrupt practices made in the petition as an effect whereof the petition is liable to rejection.

7. Learned counsel for the applicant in support of the first submission submitted that the relief regarding re-count of ballot papers, setting aside of election of the respondent No. 1 and thereafter declaration of the petition, if votes are found in excess of the respondent No. 1, as having duly elected for the parliament in place of respondent No. 1 on the basis of the election in question, which is rendered infructuous, cannot be granted.

8. Learned counsel for the opposite-party addressed the Court though half heartedly qua the first relief in the petition submitting that the petition qua the first relief has not become infructuous owing to the dissolution of the parlia-

ment and holding of the fresh elections. Reliance was placed on the decision of the Supreme Court in Sheodan Singh v. Mohan Lal Gautam (A.I.R. 1969 SC 1024).

In this case the election of Shri Mohan Lal Gautam to the U.P. Legislative Assembly from Iglas Constituency in the general election held in 1967 was subject matter of challenge at the behest of one Sheodan Singh. The election petition was dismissed by the Allahabad High Court where against an appeal was preferred before the Supreme Court by Sheodan Singh where preliminary objection to the very maintainability of the appeal was taken by the respondent Mohan Lal which was to the effect that the petition ceased to be maintainable as a result of the dissolution of the U.P. Legislative Assembly as per the President's Proclamation of April 15, 1968 under Article 356 (1) of the Constitution. That Proclamation was issued during the pendency of the election petition before the High Court. The Supreme Court rejected the argument regarding the said objection relating to the petition having become infructuous in view of the dissolution of the assembly and in paragraph 5, Court stated :—

- "5. In this proceeding we are considering the validity of the election of the respondent and not whether he is continuing as a member. If the contention of the appellant that the respondent was guilty of corrupt practices during the election is found to be true then not only his election will be declared void, he is also liable to incur certain electoral disqualifications. The purity of elections is of utmost importance in a democratic set-up. No one can be allowed to corrupt the course of an election and get away with it either by resigning his membership or because of the fortuitous circumstances of the assembly having been dissolved. The public are interested in seeing that those who had corrupted the course of an election are dealt with in accordance with law. That purpose will stand defeated if we accept the contention of Mr. Veda Vvasa."

[emphasis supplied]

Court further observed that the election petitions in this country are solely regulated by statutory provisions. Hence unless it is shown that some statutory provision directly or by necessary implication prescribes that the pending election petitions stand abated because of the dissolution of the Assembly, the—contention of the respondent cannot be accepted.

According to aforesaid decision, so far as the charge relating to the corrupt practices is concerned, the petition would survive despite the dissolution of the Legislative Assembly. From this, as a necessary corollary, it follows that the election petition qua the charges of corrupt practice would remain unaffected on account of dissolution of the Assembly. From this, as a necessary corollary, it follows become infructuous. So this case does not support the petitioner qua the relief in clause (1) as prayed in the petition.

9. The second case relied on by the learned counsel for the petitioner was Moti Ram v. Param Dev (AIR 1993 SC 1662). It was a case where the—dissolution of Himachal Pradesh Legislative Assembly took place and the question raised was whether the matter pertaining to election petition would become purely academic in case of dissolution of assembly during the pendency of the appeal. On considering the effect of dissolution of assembly, the Court held that the election petition does not become academic, as invalidation of election of candidate may give rise to liability to refund allowances received by returned candidate as a member of the Legislative Assembly. In this case, a question raised was whether the matter in issue in the appeals have ceased to be living issues and have become wholly academic. Learned counsel relied on the decision of Supreme Court in Loknath Padhan v. Birendra Kumar Sahu (AIR 1974 SC 505—Paragraph 4). Paragraph 4 of the said report is as extracted below :—

- "4. Although in the instant case, the election is not challenged on the ground of commission of any corrupt practice and a finding would not result in electoral disqualification in future but the present case differs from the case of Loknath Padhan v. Birendra Kumar Sahu (supra) in the sense that

in Loknath's case the election petition was dismissed whereas in the present case election petitions against the election of the appellant have been allowed and the election has been set aside. It has been submitted by Shri A. K. Ganguli, the learned Senior counsel appearing on behalf of the appellant, that in view of the fact that the decision of the High Court setting aside his election, the appellant may be required to refund the various allowances that he has received while he was functioning as a member of the Legislative Assembly after his election till the decision of the High Court. It would thus appear that invalidation of the election of the appellant may give rise to the liability to refund the allowances received by the appellant as a member of the Legislative Assembly. It cannot therefore, be said that the questions arising for consideration in this appeal are purely academic in nature. In these circumstances, it becomes necessary to go into the merits of these appeals."

[emphasis supplied]

10 The effect of dissolution of the legislature on a pending election appeal was considered by the Supreme Court in Loknath Padhan's case (supra). Learned counsel placing reliance on the said report pointed out the following passage from paragraph 3 :—

"3. It was held that if the election is challenged on the ground of commission of a corrupt practice the dissolution of the legislature would not have any effect on the pendency of an election petition or an appeal arising therefrom and the said petition will have to be considered on its merits whereas a challenge to the election of any other ground which does not entail future disqualification would raise academic issue only and in view of the dissolution of the legislature the election petition or the appeal arising therefrom would not survive because it would be futile and meaningless for the Court to decide an academic question the answer to which would not affect the position of one party or the other."

[emphasis supplied]

11. The aforesaid cases as relied on by the learned counsel for the petitioner are not attracted so far as the first relief in the petition is concerned, as the issue of re-counting of ballot papers and thereby declaring the election petitioner as duly elected to the parliament has ceased to remain a living issue but has become purely an academic question. The para 4 as extracted (supra) is not attracted in the present case as no question of flowing of consequences mentioned therein have arisen here.

12. The question as to whether the relief for declaration in favour of the election petitioner can be granted or not. At this learned counsel for the applicant submitted that the same cannot be granted on account 'void' having been created by dissolution of Parliament qua the impeached election and for holding of the fresh election. Reliance was placed on "Black's Law Dictionary—Sixth Edition—Page 1573" where the word "Void" has been given meanings, such as null, ineffectual, nugatory, having no legal force or binding effect, unable, in law, to support the purpose for which it was intended. Collins Cobuild English Language Dictionary was also cited placing reliance for the meaning of the word "Void" and at Page 1630 (first column) the word void has been given meaning, such as a situation or state of affairs which seems empty because it has no interest, excitement, or value and accordingly what has become void, is not reasonable.

13. Learned counsel for the applicant also placed reliance on the case of Dharti Pakar Madal Lal Agarwal v. Shri Rajiv Gandhi (AIR 1987 SC 1577) inviting the attention of the Court to paragraph 4 thereof. In this case, the election as challenged related to the parliament held in the year 1981 dissolution whereof took place, before the expiry of its term, in the year 1984 as a result whereof general elections took place in December, 1984 wherein the respondent Shri Rajiv Gandhi got re-elected from the very constituency. The validity of the election of 1984 was questioned by filing

two separate election petitions which were dismissed by the High Court and the validity of the respondent's election was upheld by the Supreme Court in Azhar Hussain v. Rajiv Gandhi (AIR 1986 SC 1253). The Court held that since the impugned election related to the Lok Sabha which was dissolved in 1984, the respondent's election cannot be set aside in the present proceedings even if the election petition is ultimately allowed on trial as the respondent is a continuing member of the Lok Sabha not on the basis of the impugned election held in 1981 but on the basis of the subsequent election of the year 1984. It was further observed that "Even if we allow the appeal and remit the case to the High Court, the respondent's election cannot be set aside after trial of the election petition as the relief for setting aside the election has been rendered infructuous by lapse of time".

[emphasis supplied].

14. In this view of the matter, the grounds raised in the petition for setting aside the election of the respondent on account of changed circumstances have been rendered academic. The Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that case its decision either way would have no impact on the position of the parties and would be an exercise in futility leading to waste of public time.

Lord Viscount Simon in his speech in the House of Lords in Sun Life Assurance Company of Canada v. Jervis, 1944 AC 111 observed :

"I do not think that it would be a proper exercise of the Authority which this House possesses to hear appeals if it occupies time, in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties to a matter in actual controversy which the House undertakes to decide as a living issue."

Thus the prayer relating to first relief has ceased to be a living issue and the cause of action qua the relief No. 1 has ceased to survive. In view of this, so far as the election petition is concerned, the relief for the recount of ballot papers and consequent whereupon if valid ballot papers come out in excess of respondent No. 1, declaration of the petitioner as having been duly elected to the Parliament having rendered infructuous as a consequence of dissolution of the Parliament, during the pendency of the election petition, cannot be granted as the respondent No. 1 is continuing member of the Lok Sabha not on the basis of the impugned election held in 1989 but on the basis of subsequent election held in 1991.

15. The second relief prayed for in the petition is regarding the declaration of the respondent No. 1 as duly elected candidate from Mahasamund Constituency No. 18 in the last election, be declared void.

16. The orders that could be passed by the High Court at the conclusion of the trial of the election petition are detailed in section 98 of the Act and the same are : (a) dismissing the election petition ; or (b) declaring the election of all or any of the returned candidate to be void ; or (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected. The reliefs (b) and (c) (supra), in view of the above discussion, cannot be granted to the petitioner. There is no question of declaration of such election of respondent No. 1 to be void, as such an election do not exist and apart anything what has become non-existent in course of time cannot be declared void. Further the respondent No. 1 is finding a seat in the Parliament not on the basis of impugned election held in 1989 but on the basis of the subsequent election held in 1991, may be from the same constituency. Before dialating on the second objection as raised by the learned counsel for the respondent No. 1 it would be apt to extract out in verbatim the affidavit filed with the petition in support of the allegations of corrupt practice/es and particulars thereof. It is :

"FORM-25**AFFIDAVIT**

I, Pawan Deewan, the petitioner in the accompanying election petition calling in question the election of Shri Vidya Charan Sankla respondent No. 1 make solemn affirmation oath and say:—

- (a) that the statement made in paragraphs 1 to 4 of the accompanying election petition about the corrupt practice of section 123 and the particulars of such corrupt practice mentioned in paragraphs 1 to 4 and the supporting schedules annexed thereto are true to my knowledge.
- (b) that the statements made in paragraphs 5 to 24 of the said petition about the commission of corrupt practices of bribery, undue influence, appeal on ground of religion & religious symbols, promotion of religious sentiment or hatred on ground of religion, publication of false statement of facts, incurring more expenditure than prescribed, obtaining and procuring assistance from Gazetted Officers and other officers and the particulars of such corrupt practice given in paragraph 5 to 24 of the said petition and the schedules annexed thereto are true to my information.

SIGNATURE OF DEPONENT

Solemnly affirmed/sworn by Shri Pawan Deewan at Jabalpur this 9th day of January, 1990

I identify the deponent, **BEFORE ME**
Sd/-
Advocate."

17. Learned counsel for the petitioner submitted that the second relief is founded on the allegations of corrupt practices. Learned counsel for the respondent No. 1 raised an objection by means of his oral submissions in respect of the affidavit accompanying the election petition in support of the allegations of corrupt practices and the particulars thereof. Learned counsel for the respondent No. 1 relying on para 3 of the application No. 65/91 also, in addition to the submissions mentioned above, submitted that the petitioner did not pray for declaration that the respondent No. 1 be declared as disqualified and under the circumstances the entire petition as it is framed and also looking to the nature of the prayer clauses, has become infructuous as no cause of action accrues and same is liable to be dismissed on this count alone.

[underlining by Court]

18. It, however, may be noticed here that the objections in para 4 of the application No. 65/91 were neither argued nor pressed for.

19. Learned counsel for the respondent No. 1 relied on the Proviso to sub-section (1) of Section 83 of the Act in respect of the oral objection regarding affidavit, which was not objected to by the learned counsel for the petitioner, who participated in the deliberations on merit. The proviso, as relied on is:—

"Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit, in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof."

[emphasis supplied]

The proviso speaks for an affidavit in the prescribed form and in this connection, learned counsel invited the attention of the Court to Rule 94-A of the Conduct of Election Rules, 1961, which reads as :—

"The affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn before a Magistrate of the first class or a Notary or a Commissioner of oaths and shall be in Form 25."

[emphasis supplied]

Form 25 is as extracted below :

"FORM 25

I,.....the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati.....(respondent No..... in the said petition) make solemn affirmation oath and say—

- (a) that the statements made in paragraphsof the accompanying election petition about the commission of the corrupt practice of and the particulars of such corrupt practice mentioned in paragraphs.... of the same petition and in paragraphsof the Schedule annexed thereto are true to my knowledge;
- (b) that the statements made in paragraphsof the said petition about the commission of the corrupt practice ofand the particulars of such corrupt practice given in paragraphs...of the said petition and in paragraphs.....of the Schedule annexed thereto are true to my information;

(c)

(d)

etc.

Signature of deponent.

Solemnly affirmed/sworn by Shri/Shrimati....
at.....this.....day of.....19.

Before me,
 Magistrate of the first class/Notary/
 Commissioner of Oath."

*Here specify the name of the corrupt practice."

20. To summarise the second part of the objections, learned counsel for the applicant/respondent No. 1 in this connection made following four-fold submissions :—

- (a) that in the absence of prayer seeking declaration for declaring respondent No. 1 as disqualified the petition as framed is infructuous as no cause of action accrues;
- (b) that the affidavit filed was not in consonance of Form 25 (supra) read with Rule 7 of the Rules framed by the High Court of Madhya Pradesh under the Act;
- (c) that the affidavit accompanying the petition wherefor proforma is prescribed by law has to satisfy the requirements of law which are mandatory in character;
- (d) that though the affidavit in proforma 25 do not provide for disclosure of source of information for the alleged corrupt practice the mode of information needs to be disclosed as the preposition is no more res-integra.

The first point as raised by the learned counsel for the respondent No. 1 is sans substance as firstly such an objection is not covered under the provisions of Order 7 Rule 11 of the Code of Civil Procedure as the allegations in the petition disclose cause of action and not the prayer. Secondly relief could be the subject matter of amendment at any stage within the framework of the allegations in the petition, if found necessary. Thirdly High Court at the conclusion of Trial of an election petition can grant only the following reliefs :—

- (a) dismiss the petition; or
- (b) declare the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

However, Section 99 of the Act provides that at the time of making an order under section 98 the High Court shall also make an order—

- (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—
- (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and
- (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice.

This provision does not speak for final order that could be passed by the High Court except recording of finding of the guilt of corrupt practice qua the nature of corrupt practice and the name of the person who committed. In this context it is relevant to extract out the Section 8A of the Act, which is :—

"8A. Disqualification on ground of corrupt practices,—

- (1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so for what period :

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

- (2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.
- (3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President

shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion."

(emphasis supplied)

The case after finding of guilt u/s. 99 of the Act to be submitted to the President of India for determination of the question as to whether such person shall be disqualified and if so, for what period. When High Court cannot grant relief u/s. 98 of the Act there is no question of claiming the relief in petition by the election petitioner u/s. 99 of the Act, if the charges of corrupt practice are pleaded in the petition, then High Court to record only finding and nothing more. The objection thus fails.

It may, however, may not go un-noticed that the High Court does not act as a Commission under the Commissions of Enquiry Act, 1952 for recording finding leaving action for the President of India. President of India cannot figure himself in the justice processing delivery system and thereby in judicial review process. The provision under section 99 of the Act read with section 8A, prima facie, erodes upon the basic feature of the Constitution and independence of the Judiciary. However here there is neither any such challenge nor could such a challenge be given in the election petition in view of law laid down by the Supreme Court in the case of Charan Lal Sahu v. Shri Neelam Sanjeeva Reddy (AIR 1978 SC 409).

In connection with second point, learned counsel for the respondent No. 1 as a first limb of submission submitted that the petitioner has to specify the paragraphs of the election petition which relate to the allegation of corrupt practice in the affidavit as it is a mandatory requirement of law and it has to be in the prescribed form in support of the allegations of corrupt practices and particulars thereof and this mandatory requirement has not been complied with by the petitioner/opposite party. as according to him, the election petitioner has to specify in the affidavit the name of the corrupt practice as provided u/s. 123 of the Act and while stating the name of corrupt practice also to give the particular of such practice as mentioned in the paragraphs of the petition in the beginning of the affidavit.

Second limb of submission is that though the Form 25 does not provide for giving source of information, if any, for such corrupt practice and the mode of information but the mode of information has to be disclosed and this proposition is no more res integra in view of the pronouncement of the Supreme Court. The objection (d) (supra) finds place in objection (b).

21. Learned counsel for the respondent No. 1 in support of first limb of submission submitted that the election petitioner has not specified the name of the corrupt practice out of the corrupt

practices provided u/s. 123 of the Act and reliance was placed on the decision of the Supreme Court in V.K. Sakhlecha v. Jagjiwan (AIR 1974 SC 1957). Paragraph (a) of the affidavit filed in support of the election petition does not disclose the name of the corrupt practice. It only mentions "corrupt practice of section 123". Paragraph (a) is sworn on personal knowledge. In Paragraph (b) of the said affidavit the corrupt practices are mentioned but this paragraph is based on information but of course, the source of information has not been disclosed. The aforesaid case of the Supreme Court V. K. Sakhlecha v. Jagjiwan (supra) as relied on observed in Paragraph 14 as

"14. The non-disclosures of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case, it will be discovered."

(emphasis supplied)

22. So far as the first limb of submissions is concerned, the affidavit in clause (a) has not given the name and the particulars of corrupt practice as provided u/s. 123 of the Act, but has stated that the statements made in paragraphs 1 to 4 of the accompanying petition about the corrupt practice of section 123 of the Act and the particulars of such corrupt practice mentioned in paragraphs 1 to 4 and the supporting schedules annexed thereto are true to my knowledge. This does not satisfy the requirement of law as required under Form 25. In the affidavit, apart from mentioning the statements in paragraphs 5 to 24 of the petition about the commission of corrupt practice, the name and the particulars of corrupt practice have to be given. So the position is that in the paragraphs of the petition regarding the statements of corrupt practices to be mentioned, the name of the corrupt practice as provided u/s. 123 of the Act to be mentioned and paragraphs of the petition containing particulars of such corrupt practices to be given and also the paragraphs of the schedules. In the present case, the Clause (a) of the affidavit is not

in conformity with Clause (a) of Form 25 as the name of the corrupt practice has not been given. This paragraph is sworn on personal knowledge and, therefore, there was no question of disclosure of any source of information.

23. So far as the second limb of the submissions is concerned, Clause (b) of the affidavit, which is sworn on the basis of the information, does not disclose the source of information. Learned counsel for the respondent No. 1 relying on *V. K. Saklecha's case* (supra) submitted that the affidavit is defective. He further submitted that affidavit, in essence, though forms part of the petition is in the shape of criminal charge as the allegations of corrupt practices are quasi-criminal in nature and as such without disclosing the charge in the manner provided the complete cause of action has lacked.

24. The Supreme Court in *V. K. Saklecha's case* (supra) considered the case under the Act arising from the judgment of the Madhya Pradesh High Court. In paragraph 10 it was stated that Rule 9 of the Madhya Pradesh High Court Rules in respect of election petitions states that the rules of the High Court shall apply in so far as they are not inconsistent with the Representation of the People Act, 1951 or other rules, if any, made thereunder or of the Code of Civil Procedure in respect of all matters including inter alia affidavits. Rule 7 of the Madhya Pradesh High Court Rules states that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is a statement made on information or belief and must also state the source or grounds of information or belief with sufficient particularity and in paragraph 11 of the said report the Court has stated that Form No. 25 of the Conduct of Election Rules requires the deponent of an affidavit to set out which statements are true to the knowledge of the deponent and which statements are true to his information. The source of information is required to be given under the provisions in accordance with Rule 7 of the Madhya Pradesh High Court Rules. In so far as Form No. 25 of the Conduct of Election Rules requires the deponent to state which statements are true to knowledge there is no specific mention of the sources of information in the form. The form of the affidavit and the High Court Rules are not inconsistent. The High Court Rules give effect to provisions of Order 19 of the Code of Civil Procedure.

The Court pointed out the importance of setting out the sources of information in affidavits which came up for consideration before the Supreme Court from time to time. The earlier decision was *State of Bombay v. Purushottam Jog Naik* (AIR 1952 SC 317) where the Supreme

Court endorsed the decision of the Calcutta High Court in *Padmabati Dasi v. Rasik Lal Dhar* (ILR 37 Cal 259) and held that the sources of information should be clearly disclosed. Again, in *Barium Chemicals Ltd. v. Company Law Board* (AIR 1967 SC 295) the Supreme Court deprecated 'slipshod verifications' in an affidavit and reiterated its ruling in *Bombay case* (supra) that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code whether the Code applies in terms or not. Again in *A.K.K. Nambiar v. Union of India* (AIR 1970 SC 652) the Supreme Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations.

25. However, in the case of *V. K. Saklecha* (supra) in paragraph 13 counsel on behalf of the appellant contended that non-disclosure of the source of information in the affidavit was a fatal defect and the petition should not have been entertained. Court observed that it is not necessary to express any opinion on that contention in view of the fact that the matter was heard for several months in the High Court and thereafter the appeal was heard by this Court. Court further observed that the grounds or sources of information are to be set out in an affidavit in an election petition. The submission of the counsel on behalf of the respondent was that the decisions of Supreme Court were not on election petitions. Court said that the rulings of this Court are consistent. The grounds or sources of information are to be set out in the affidavit whether the Code applies or not. Section 83 of the Act states that an election petition shall be verified in the manner laid down in the Code. The verification is as to information received. The affidavit is to be modelled on the provisions contained in Order 19 of the Code. Therefore, the grounds or sources of information are required to be stated.

26. Paragraph 14 of the aforesaid decision in *V. K. Saklecha's case*, as has already been extracted above, which deals with the non-disclosure of grounds or sources of information, the Court said that the non-disclosure of grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the source of information at the time of presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the source of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case it will be discovered.

27. It may be noticed that the filing of the affidavit along with the election petition in cases where the allegations of corrupt practices are made is a must and the affidavit has to be in Form No. 25 with the addition recording source of information as per decision of the Supreme Court in V. K. Saklecha's case (supra). The necessity of affidavit is of course to constitute a charge regarding corrupt practice provided under section 123 of the Act. The verification clause as provided in Rule 15 of Order 6 of the Code of Civil Procedure, which is as extracted below, only says :

"What he verifies upon information received and believed to be true."

It does not provide for disclosure of the source.

28. In Hari Vishnu Kamath v. Ahmad Ishaque & others (AIR 1953 SC 235) in Paragraph 35 the Court though in different context laid down the rule of law as :

"when the law prescribes that the intention should be expressed in a particular manner, it can be taken into account only if it is so expressed. An intention not duly expressed is, in a Court of law, in the same position as an intention not expressed at all."

This principle would be attracted as here the intention of disclosure of the source of information and the intention of disclosing the particular corrupt practice is provided by law.

29. There may arise a situation where the allegation of corrupt practices are made in the election petition but no affidavit in support of all those allegations of corrupt practices as required in Form No. 25 has been filed. The question would arise as to whether in such a situation the Court would proceed to try the returned candidate for the charges of corrupt practice. The answer would be that the Court would not do so as the affidavit forms the part of the petition and the returned candidate is not properly given the charge in the shape of the affidavit making him known as to what he has to meet and further the elimination of the chances of stand and also change of the source of the information. The complete cause of action thus in the absence of affidavit in the form prescribed together with satisfying the requirements of the Rules of the Court in view of decision of V. K. Saklecha's case (supra), qua the charges of corrupt practice would not be there and as such the filing of the affidavit satisfying all the require-

ments in Form No. 25 is a mandatory requirement of law.

30. Further the statutory provision laying down the requirement cannot be allowed to be diluted as the very purpose of statutory provision is to give obedience and not the disobedience and any deviation showing the requirement of law regarding filing of an affidavit when the allegations of corrupt practices are made and also regarding other requirements as such mentioning of paragraphs regarding statements of facts qua the allegation of corrupt practice and the name of the particular corrupt practice and also the material particular qua the corrupt practice and the source of the information of the corrupt practice is an essential one as the charge of corrupt practice is not purely of civil nature but is of quasi-criminal nature. Accordingly, I am of the view that when the election petition which contains allegations of corrupt practices against a returned candidate then the petition should be accompanied by an affidavit and such an affidavit must strictly conform to the requirements mentioned in Form No. 25 as well as the disclosure of the source of information as required under the Rules of the Court. In the absence of satisfying the above requirements the petition qua the corrupt practices would be treated as not disclosing the complete cause of action qua the charges of corrupt practice.

31. In view of above, I find that the election petition on account of sufferance of deficiency noticed heretofore cannot proceed further as the relief of recounting of ballot papers and declaration of result have become infructuous on account of subsequent holding of the election and further the allegations of corrupt practice, which do not vanish owing to holding of fresh poll, but in the present case the relief on the basis of allegations of corrupt practices against the respondent No. 1 cannot be granted as the respondent No. 1 cannot be put to trial as affidavit, which is essence of the charges, had failed to satisfy the requirement of law.

32. The petition is accordingly dismissed. No order as to cost. However, the election petitioner is entitled to take back the security amount which he deposited. The security amount so deposited shall be refunded to the petitioner as a whole.

33. In view of requirement of Section 103 of the Act, the intimation of decision and authenticated copy of decision may be sent to all those who are mentioned therein.

Sd/-

D. P. S. CHAUHAN, Judge

22-9-1995

